Supreme Court, U.S.
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No. 00-243

IN THE
SUPREME COURT OF THE UNITED STATES

Alexander S. McMath, an individual,
Petitioner,

v.

Alva M. Montgomery, an individual;
Patsy Patterson, an individual, and
The Estate of Clarence H. Montgomery,
Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioners incorrectly list the respondents to this petition. They are Alva M. Montgomery, an individual; Patsy Patterson, an individual; and the Estate of Clarence H. Montgomery, acting by and through its duly appointed representative, Alva M. Montgomery.

The Estate of Clarence C. Montgomery did not join in the appeal to the Ninth Circuit Court of Appeals and is not a respondent to Mr. McMath's petition for a writ of certiorari.

Respondents have no corporate affiliations.

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REASONS FOR DENYING THE WRIT

Most simply, Mr. McMath's petition for a writ of certiorari should be denied because this Court has already addressed the core issue that his petition presents: under what circumstances will state laws be preempted by the Employee Retirement Income Security Act (ERISA). That core issued was raised, analyzed and resolved by this Court's decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995).

Two years later, in its 1997 term, this Court decided three more ERISA preemption cases, applying the standards set forth in *Travelers* to specific state laws and providing further guidance on when ERISA preemption may arise. *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, 420 U.S. 806 (1997); *Boggs v. Boggs*, 520 U.S. 833 (1997); and *California Div. of Labor Standards Enforcement v. Dillingham Const. N.A., Inc.*, 519 U.S. 316 (1997). And in all of these cases, the Court emphasized the strong "starting presumption that Congress does not intend to supplant state law."

In the years before *Travelers*, this presumption was notably absent, and the various federal appellate courts found that all state laws that had any relation to an ERISA plan were preempted. See *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). It is accordingly hardly surprising that preemption cases that were decided before this Court's decision in *Travelers* would conflict with those decided after *Travelers*. Yet that unsurprising "conflict" provides petitioner's only justification for seeking a writ.

As the Fourth and Sixth Circuits address new preemption cases under the guidelines set forth in *Travelers* and its progeny, the purported conflict between the circuits will disappear. The grant of petitioner's request writ will not speed that process.

The Ninth Circuit's ruling in this matter was proper in all respects, and faithfully adhered to this Court's pronouncements on ERISA preemption. We accordingly respectfully ask that this Honorable Court deny the Petition for a Writ of Certiorari.

I.

THIS COURT HAS ADEQUATELY ADDRESSED ERISA PREEMPTION

Often, petitioners approach this Court and ask that their cases be heard, so that long neglected legal issues can be analyzed and decided. Here, however, there can be no such claims of neglect, for few issues in the last several years have received more attention from this Court than the issue of ERISA preemption. Indeed, in *De Buono*, the Court noted in its first footnote that ERISA preemption had consumed considerable attention from the Court, and had resulted in no fewer than thirteen decisions. 420 U.S. 806 at fn. 1.

Chief among those decisions was *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995). For in that decision, the Court directly tackled the core issued that had befuddled so many lower courts: when does a state law "relate to" an employee benefit plan?

In enacting ERISA, Congress wrote that its provisions would "supersede any and all State laws insofar as they . . . relate to any employee benefit plan." 29 U.S.C. 1144(a). But, as this Court observed in *Travelers*, ultimately every law intertwines and "relates" to every other law, and clearly Congress did not intend such universal obliteration of state law. Accordingly, in *Travelers*, this Court delved into the legislative history in its efforts to glean the appropriate reach of ERISA preemption. And it found that in

drafting the ERISA preemption clause, Congress was primarily concerned that plan administrators not face conflicting directives for reporting, disclosure, fiduciary responsibility and the like. 514 U.S. at 660-661. Absent either direct or indirect intrusion into these plan duties, the Court concluded, the starting presumption should be that a state law is valid.

Following *Travelers*, this Court again addressed the preemption issues in *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, 420 U.S. 806 (1997), *Boggs v. Boggs*, 520 U.S. 833 (1997), and *California Div. of Labor Standards Enforcement v. Dillingham Const. N.A., Inc.*, 519 U.S. 316 (1997). Each decision cemented the *Travelers* analysis, and confirmed the "starting presumption that Congress does not intend to supplant state law."

Because the settings in which ERISA preemption issues may arise are so numerous, even if it wanted to this Court would not have time to review every state law that some litigant felt was supplanted by ERISA. Rather, by articulating the principles of ERISA preemption, this Court has set the standards that will, in time, lead to uniform treatment by the lower appellate courts.

Moreover, as we discuss below, the Ninth Circuit carefully adhered to this Court's preemption decisions. In contrast, the supposedly "conflicting" preemption decisions from the Fourth and Sixth Circuits pre-dated *Travelers* and its progeny. When those circuits next address the issue, they will undoubtedly be guided by this Court's pronouncements, and the conflicts petitioner complains of will disappear.

II.

THE NINTH CIRCUIT FAITHFULLY FOLLOWED THIS COURT'S ERISA PREEMPTION DECISIONS

In his petition for a writ of certiorari, Mr. McMath argues that the Ninth Circuit failed to properly analyze the ERISA preemption issue in this case, because it supposedly failed to look to the "objectives of the ERISA statute as a guide to the scope of state law that Congress understood would survive." *Petition,* at p. 11. Mr. McMath is wrong.

Rather, after carefully reviewing this Court's pronouncements on ERISA preemption, the Ninth Circuit directly addressed the need to analyze Congress' objectives in enacting ERISA. As the Ninth Circuit wrote:

> To determine the existence of a forbidden connection, we "must go beyond the unhelpful text and the frustrating difficulty of defining its key term ['relate to'], and look instead to both the objectives of the ERISA statute as a guide to the scope of the state law the Congress understood would survive," and "the nature of the effect of the state law on ERISA plans." [Citations.] This approach closely resembles the approach taken in *Peckham*, 964 F.2d at 1052, where the court looked to the ERISA statute and found that the doctrine of substantial compliance did not frustrate any of its objectives. Therefore, we find this approach persuasive.

Petition at pp. 16a to 17a.

Nor is petitioner correct that the Ninth Circuit's decision in this case will place plan administrators under conflicting regulation--the primary vice that Congress wished to avoid. For regardless of whether one applies the forum state's substantial compliance rules, or instead creates and follows a federal common law standard, there is only one rule that a plan administrator must apply.

This case thus does not present a situation where ERISA demands one action, but a state law requires another. And it does not present a state law that was intended to apply just to ERISA, or even a state law that disproportionately affects ERISA plans. Instead, this case presents precisely the sort of state law that under *Travelers* and its progeny survives ERISA preemption.

III.

THERE IS NO TRUE CONFLICT BETWEEN THE CIRCUITS

Equally incorrect is Mr. McMath's claim that this Court must resolve a conflict between the Ninth and Tenth Circuits on the one hand, and the Fourth and Sixth Circuits on the other.

It is true that the Fourth and Sixth Circuits have found that ERISA does indeed preempt state substantial compliance doctrines. But both courts reached that result before *Travelers*. And both courts found preemption by observing that substantial compliance rules "relate to" ERISA — in the broad sense of relation that *Travelers* explicitly denounced. *See McMillan v. Parrot*, 913 F.2d 310 (6th Cir. 1990); *Phoenix Mutual Life Ins. Co. v. Adams*, 30 F.3d 554 (4th Cir. 1994).

Of course, whenever this Court announces a new legal standard, there will for a short period be a conflict between those circuits who have not yet had occasion to adopt the new standard in a published decision and those who have. But that is hardly the sort of "conflict" that justifies the grant of a writ of certiorari. For if it were, this Court would always be burdened with the need for multiple decisions on the same core issue.

Indeed, the Sixth Circuit has already recognized that under *Travelers*, it must revise its preemption analysis. Thus, while suggesting that *Travelers* might not represent the vast sea change that some academic commentators had asserted, the Sixth Circuit in *Kentucky Association of Health Plans v. Nichols*, 2000 FED App. 0304P (6th Cir. Sept. 7, 2000) explicitly recognized that *Travelers* required a new approach to determining when a state law "relates to" ERISA. It has now applied that new standard, and in the process has helped erase the "conflict" that petitioner sees.

Undoubtedly, when it next addresses the issue, the Fourth Circuit will also revise its approach.

The grant of Mr. McMath's petition would thus serve no valid end. The Court has already addressed the preemption doctrines that apply to this case, the Ninth Circuit faithfully, carefully and correctly applied those doctrines, and there is no true conflict with any other post *Travelers* decision.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court deny Mr. McMath's petition for a writ of certiorari.

Respectfully submitted,

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